

## **INDEPENDENT CONTRACTOR AGREEMENT (ICA)**

### **INSTRUCTIONS**

IT IS THE RESPONSIBILITY OF THE CONTRACT ORIGINATOR TO DO THE FOLLOWING PRIOR TO THE CONTRACTOR PROVIDING SERVICES:

1. **WHEN TO USE THIS CONTRACT:** Use this contract for services such as transportation, furniture delivery, repairs & installation of equipment, food catering/serving, and other non-consulting services. Do not use for Public Works Construction. See the [Purchase of Services – Chart of Required Documents](#) for more guidance.
2. **COMPLETE the ICA CONTRACT:** All blank spaces must be completed.
  - A. Attachment A:
    1. Ensure that contacts for Contractor and Department are listed.
    2. Scope of work should have sufficient detail for services provided. Attach separate proposal if necessary.
3. **OBTAIN SIGNATURES:**
  - A. Refer to the [Purchasing Approval Matrix](#) for signature authority.
  - B. If there are no changes to the District's template, proceed to obtaining signatures from Contractor and authorized District signers in this order:
    1. Contractor
    2. Department Manager/Dean/Budget Officer (*District Use Only* box on signature page)
    3. Authorized District Signer
  - C. If contract modifications have been requested, email [LegalReview@sjcccd.edu](mailto:LegalReview@sjcccd.edu) for review and approval of changes. Upon approval, route for signature in this order:
    1. Contractor
    2. [LegalReview@sjcccd.edu](mailto:LegalReview@sjcccd.edu)
    3. Department Manager/Dean/Budget Officer (*District Use Only* box on signature page)
    4. Vice Chancellor of Administrative Services
4. **CHECK THAT SUPPORTING DOCUMENTS ARE COMPLETE:**
  - A. Fully executed contract
  - B. Proposal or Quote if applicable
  - C. COI – Certificate of Insurance with Endorsement pages ([Insurance Requirements](#))
  - D. [W9 Form](#)
  - E. [BEC Form](#)
5. **ENTER REQUISITION AND OBTAIN APPROVALS:** Once supporting documents are complete, you may now open your requisition. Once a requisition number is generated, upload all supporting documents to [Square 9](#). Obtain requisition approval by your Department Manager and Business Services. Purchasing will review documents and work with the department to correct any deficiencies.
6. **THE FINAL STEP:** Purchasing transmits Purchase Order to Contractor with fully executed agreement and other supporting documents if applicable. CONTRACTOR MAY NOW COMMENCE WORK.

END OF INSTRUCTIONS. THIS PAGE IS INFORMATIONAL AND NOT PART OF THIS AGREEMENT

Please note that all guides, forms and templates are located in the Purchasing Toolbox  
<https://sjcccd.edu/district-services/general-services/purchasing-toolbox>

## INDEPENDENT CONTRACTOR AGREEMENT (ICA)

*(This agreement is not a construction contract within the meaning of Civil Code section 2783, and is not an agreement for the provision of construction services within the meaning of Public Contract Code section 20651.)*

**THIS AGREEMENT** (hereinafter “Agreement”) between **San Jose-Evergreen Community College District**, a public educational agency (“District”) and \_\_\_\_\_ (“Contractor”) is effective this day \_\_\_\_\_ (Date) between the Contractor and District.

Whereas, Independent Contractor warrants and represents to District that Independent Contractor has the experience, expertise and resources to successfully effectively perform agreed-upon services and will provide these services to the District in compliance with all applicable laws and regulations.

### **1. General Conditions**

- A. Independent Contractor shall perform the agreed upon services as defined by the scope of the work, deliverables, and standard of performance identified in Attachment A and in accordance with the terms and conditions in this Agreement. The services listed in this Agreement and in Attachment A are referred to as “Services”. Independent Contractor’s Services shall be timely and performed or provided consistent with the professional skill and standard of care of Independent Contractor’s profession and in compliance with all applicable laws and regulations.
- B. **Relationship to the Parties:** It is understood that this is an agreement by and between Contractor and District and is not intended to, and shall not be construed to, create the relationship of agent, employee, partnership, joint venture or association, or any relationship aside from that of independent contractor. Contractor warrants that neither it nor its own employees, agents, subcontractors or helpers are employees or agents of the District, and further agrees that the District shall not be vicariously liable for the negligence or other tortious conduct of Contractor, its employees, agents, subcontractors or helpers.
- C. **Indemnity:** Contractor shall indemnify, defend, and hold the District, its Board of Trustees, officers, agents, employees, and volunteers harmless against any and all liability, claims, suits, demands, causes of action, damages, losses, injuries, and expenses, including reasonable attorneys’ fees, whether actual or alleged, arising from all acts or omissions to act of Contractor or its officers, agents, employees, volunteers, and subcontractors, including any claim that Contractor infringed a third party patent or copyright or other intellectual property right, unless the liability or claims arise from the District’s sole and active negligence or willful misconduct. The provisions of this section shall survive the termination or expiration of this Agreement. These Indemnification provisions are independent of and shall not in any way be limited by the Insurance Requirements of this Agreement.
- D. **Assignment:** Contractor shall not assign this Agreement or any of its obligations hereunder without the prior written consent of the District, which shall have sole discretion to approve or deny that request. Any attempted assignment without such prior written consent of District, shall constitute a material breach of this Agreement and, at District’s sole discretion, constitute cause to terminate this Agreement. However, unless otherwise stated in Section 3 (Employment of Additional Workers by Contractor) or Attachment A (Description

of Services to be Rendered), Contractor may use the services of subcontractors under its supervision and control to perform parts of its work hereunder. Contractor's use of a subcontractor shall not release Contractor from any of its obligations hereunder.

- E. **Ownership of Intellectual Property:** Contractor agrees that any and all intellectual property it creates in the course of performing its work hereunder is solely owned by the District, which pursuant to this Agreement is paying for such property; and that unless otherwise specified in Attachment A (Description of Services to be Rendered) these are works for hire and all rights, title and interest shall belong to the District and the District is and shall be the sole registered owner of any resulting copyright, patent, trademark, trade name, or service mark. Contractor shall refrain from disclosing any versions of the work product, plans, and specifications to any third-party without first obtaining written permission of District. Contractor performing copyrighted musical or literary works is responsible for securing the necessary permission or pay any royalties or fees required to perform such works, and shall indemnify, hold harmless and defend the District, its Board of Trustees and employees from any infringement claim resulting from its activities hereunder.

## **2. Equipment and Facilities**

Contractor shall provide all necessary equipment and facilities to render Contractor services pursuant to this Agreement unless the parties to this Agreement specifically agree in writing that said equipment and facilities will be provided in a different manner.

## **3. Employment of Additional Workers by Contractor**

Contractor will not be prohibited from employing additional workers or subcontractors necessary for the completion of this Agreement. However, these individuals must be fully supervised, and fully qualified to complete their assigned tasks, and shall not be employees of District. The provisions of this Agreement are applicable to such Contractor's employees and/or subcontractors as they are to Contractor. Furthermore, District will be promptly notified in writing of any and all subcontractors under this Agreement and reserves the right to disapprove any subcontractor. Contractor's failure to obtain such prior written consent may constitute a material breach of this Agreement, giving District the right, at its sole discretion, to terminate this Agreement.

## **4. Insurance Requirements.**

Acceptance of this Agreement constitutes that Contractor understands and agrees it is not covered under District's general liability insurance and that Contractor agrees, during the full term of this Agreement, to maintain in force, at Contractor's sole expense, all necessary insurance for its officers, agents, and employees, including but not limited to general liability, errors and omissions, worker's compensation, disability, unemployment insurance, and any other legally required insurance. District approval of the Insurance contracts required by this Agreement does not in any way relieve the Contractor from monetary liability or defense/indemnification requirements under this section.

The Insurance obligations under this agreement shall be: 1—all the Insurance coverage and/or limits carried by or available to the Contractor; or 2—the minimum Insurance coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the District.

No representation is made that the minimum Insurance requirements of this Agreement are sufficient to cover the obligations or liabilities of the Contractor under this Agreement.

Unless otherwise set forth in Attachment A, prior to commencing its work hereunder, Contractor shall provide District with proofs of such insurance and shall also supply District with a Certificates of Insurance naming the District as an Additional Insured along with an Additional Insured Endorsement. Contractor shall supply District with proof that Contractor is covered by the following insurance during term hereof:

- A. Commercial General Liability Insurance. (including Bodily Injury or Death and Property Damage) with a minimum limit of one million dollars (\$1,000,000) per occurrence, and an aggregate amount of two million dollars (\$2,000,000);
- B. Commercial Automobile Liability Insurance. (including owned, non-owned, and hired vehicles) with minimum limit of one million dollars (\$1,000,000) per occurrence.
- C. Workers' Compensation and Employers' Liability. Statutory limits required by law.
- D. Additional Insurance Requirements.
  - I. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.
  - II. All insurance must be issued by an admitted insurance carrier (licensed to do business in the State of California), carrying a rating of not less than A-VII in the most current A.M. Best's Insurance Rating Guide – or otherwise acceptable to District.
  - III. Waiver of Subrogation. Contractor agrees that in the event of loss due to any perils for which it has agreed to provide Commercial General and Automobile Liability insurance, Contractor shall look solely to its insurance carrier(s) for recovery and grants a waiver of any right to subrogation which any such insurer of Contractor may acquire against the District by virtue of payments of any loss under this insurance.
  - IV. Additional Insured. Insurance shall name San Jose-Evergreen Community College District and its Board of Trustees, officers, employees, agents, and volunteers as Additional Insureds under its Commercial General Liability policy.
    - i. The Additional Insured language in the Description of Operations box of the COI or the Endorsement must read: "San Jose Evergreen Community College District, its trustees, officers, agents, employees, and volunteers, individually and collectively, are named as Additional Insureds on General Liability policy as per attached endorsement."
    - ii. The Certificate Holder must read: San Jose Evergreen Community College District, 40 South Market St. San Jose, CA 95113.
  - V. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with 30 days written notice to the District.

5. **Protection of Confidential Information.** Contractor understands and acknowledges that during its performance of the Services, it or its employees may have access to private and confidential information in the District's possession, custody or control, including but not limited to private information regarding students, parents,

guardians, faculty, donors, employees, staff, alumni, or other personnel data or information and other District related trade secrets, business plans, and other proprietary information (“Confidential Information”). This information may be protected by state and federal law. Contractor shall not disclose, copy, or modify any Confidential Information without the prior written consent of the District or unless otherwise required by law. Contractor will promptly notify the District if it becomes aware of any possible unauthorized disclosure or use of the Confidential Information. The provisions of this section shall survive the termination or expiration of this Agreement.

6. **Disabled Accessibility and Electronic and Information Technologies.** Contractor hereby warrants that any goods or services, including any hardware or software products or services, to be provided under the Agreement comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services, which is brought to its attention. Contractor further agrees to indemnify, defend, and hold harmless the District, the Chancellor's Office of the California Community Colleges, and any California community college using the Contractor's products or services from any claim arising out of its failure to comply with these requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of the Agreement.
7. **Non-Discrimination Endorsement.** Contractor and District mutually agree that they will comply with all applicable Federal and California state anti-discrimination laws and regulations and agree not to unlawfully discriminate against any prospective or active employee engaged in the work, or against any other person, on the basis of race, color, age, ancestry, national origin, sex, religious creed, marital status, or physical or mental disability, medical condition, genetic information, sex, gender, gender identity or expression, or sexual orientation or any other category protected by law, including but not limited to, the California Fair Employment and Housing Act, beginning with Labor Code Section 1410, and Labor Code Section 1735. In addition, Contractor agrees to require like compliance by all hired Subcontractors.
8. **Provisions Required By Law Deemed Inserted.** Each provision of law and clause applicable to this Agreement, or required by law to be inserted in this Agreement, is deemed inserted herein and the Agreement shall be read and enforced as though the provisions are included herein.
9. **Audit.** Contractor agrees that the District has the right to review, audit, and to copy any of Contractor's or Contractor's Subcontractors' records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is required. Contractor agrees to allow the District access to these records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Contractor agrees to include a similar right of the District to audit records and interview staff in any subcontract or Subcontract Agreement related to performance of this Agreement.

**10. Advertising.** Contractor shall not use the name of the District, its officers, directors, employees, agents, or alumni in advertising, social marketing campaigns, publicity releases or otherwise without securing the prior written consent of the District in each instance.

**11. Mediation; Arbitration; Prevailing Party Attorney Fees**

The parties agree that if any dispute or controversy arises between them in any way arising out of, related to, or connected with this Agreement or its subject matter, they will participate in good faith in Mediation and agree to equally share all Mediator fees. If the Parties are unable to resolve the dispute or controversy through Mediation, the Parties agree to submit the pending dispute or controversy to final and binding Arbitration to be held in Santa Clara County, California, and to be governed by JAMS. By agreeing to this binding Arbitration provision, the Parties understand that they are waiving certain rights and protections which may otherwise be available if a claim were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this arbitration provision, the right to a jury trial, certain rights of appeal, the right bring a claim as a class member in any purported class or representative proceeding; and a right to invoke formal rules of procedure and evidence. The prevailing party shall be awarded all reasonable attorneys' fees incurred in good faith, expert witness fees, and other litigation expenses, expended or incurred in such arbitration or litigation, including arbitration fees and arbitrator compensation. The provisions of this section will apply during the term of this Agreement and survive after the termination or expiration of this Agreement.

**12. Governing Law; Venue**

The rights and obligations of the parties hereunder shall be governed by the laws of the State of California. Venue in any action to enforce or declare rights hereunder shall be in the Superior Court of the County of Santa Clara, and any such action to be stayed by the Court pending contractual Mediation/Arbitration.

**13. Force Majeure**

The Contractor and District are excused from performance during the time and to the extent that they are prevented from obtaining, delivering or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other party, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.

**14. Withholding**

The District shall not withhold, set aside or pay on Contractor's behalf any money for federal income tax, state income tax, social security tax, unemployment insurance, disability insurance or any other federal or state fund whatsoever. It shall be the sole responsibility of Contractor to account for, withhold and pay for all of the above. Contractor shall defend and indemnify the District against any claim or suit by the IRS, State Franchise Tax Board or other taxing agency which asserts that Contractor or the District failed to withhold or make necessary tax payments arising from Contractor's work hereunder. Provided, however, where Contractor is not a California resident, the District may withhold from its payments to Contractor such sums as are required by State laws and

regulations, and remit that money to the State Franchise Tax Board, which sums shall thereafter not be owed by District to Contractor.

**15. Changes or Alterations**

This Agreement shall constitute the entire agreement between the parties respecting the matters covered herein, and supersede any prior or contemporaneous written or oral promises or representations regarding these matters. This Agreement may not be modified or amended except by writing signed by the parties. No changes, alterations, change orders or increases in Contractor compensation, or other variations of any kind, shall occur without the written consent of appropriate authorized District personnel acting within their signatory authority as defined by Board Policy 6150. Contractor acknowledges that other District personnel are without authorization to either order extra and/or changed work, increase compensation, or waive contract requirements, and that Contractor proceeds with any extra work ordered by such unauthorized persons at its own risk, and shall not receive payment therefore.

**16. Notice**

All Notices required or permitted to be given under this Agreement by either party to the other, shall be in writing and given, served, and received, if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or sent by overnight delivery services, or facsimile transmissions, addressed as follows:

**For the District:**

Name:	
Title:	
Address:	
City, State, Zip:	
Phone:	
Email:	

**For the Contractor:** Contractor information in section 19.

**17. Termination**

The District may terminate this Agreement for cause upon Contractor’s breach of any material provision herein, and, in that event may proceed with completion of the work in any commercially reasonable manner including hiring another contractor and obtaining reimbursement from Contractor of any costs to the District resulting from such cover. The District may at its discretion deduct such extra costs and damages from any amounts owing to Contractor. If District’s cost of completing Contractor’s work exceeds the amount available for District to deduct, Contractor shall remit to District the balance owed to District. The District may terminate this Agreement for convenience in its sole discretion upon ten (10) Days written notice to Contractor. The Contractor shall be entitled only to compensation earned up to the point of written notice of termination, in addition to reasonable demobilization costs and expenses, but shall not be compensated for any lost business opportunities or anticipated profit on the balance of work not performed.

**18. Severability**

In the event any portion of this Agreement is determined by any court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed void and the remainder of this Agreement shall continue in full force and effect.

**19. Contractor Information**

Contractor Name:	
Mailing Address:	
City, State, Zip:	
Business Phone:	
Fax:	
Email:	
Contractor Sole Proprietor:	Yes <input type="checkbox"/> No <input type="checkbox"/>
Social Security Number (SSN) or Employer Identification Number (EIN):	
Former employee(s) of the District?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, date last employed: _____
Related to any employee(s) of the District?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If Yes, please identify individuals:	
California Resident?	Yes <input type="checkbox"/> No <input type="checkbox"/>

**20. Payment for Services**

In return for Contractor’s satisfactory performance of the work per Attachment A, District shall compensate Contractor the total sum **not to exceed** \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

Contractor shall be solely responsible for payment of its own taxes, its own subcontractor costs, out of pocket expenses and overhead associated with the performance of its work. Payment shall be due upon satisfactory completion of all services. Contractor shall not be allowed additional sums for the satisfactory completion of its work unless otherwise approved in writing pursuant to paragraph 8 above. The District’s financial obligations under this Agreement are limited to the payment of the compensation provided in Attachment A of this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed.



**21. Payment Terms**

Unless specified otherwise in this section, payment terms are Net 30 days, computed either from date of delivery and acceptance of contracted services or from the date of receipt of correct and proper invoices prepared in accordance with the terms of this Agreement whichever date is later. Invoices must be sent via email to the email address checked below:

accounts.payable@sjeccd.edu   
bond.invoices@sjeccd.edu

**22. Other Conditions**

Payments to Contractor pursuant to this Agreement shall be reported by Contractor to Federal and State taxing authorities as required by law.

**23. Warranty**

Contractor warrants that it shall provide all services required hereunder in a reasonable and competent fashion which meets or exceeds any and all applicable industry standards for such work. Contractor agrees that District's payment obligation hereunder is conditioned on Contractor's completion of all of its work unless otherwise specified hereunder. District's remedies for breach of warranty shall include any and all remedies under law including without limitation, covering and suing for damages, and equitable relief.

Notwithstanding any other provision herein, Contractor's warranty obligations shall survive termination of this Agreement.

**24. Term of Agreement**

The Term of this Agreement shall be from (start date) \_\_\_\_\_ through (end date) \_\_\_\_\_, subject to provisions of Sections 8 and 9 of this Agreement. Contractor shall complete its work by (date) \_\_\_\_\_. Failure to complete the work by the aforementioned date shall potentially render Contractor liable for delay damages, or liquidated damages if provided for in this Agreement.

**25. Entire Agreement.**

This Agreement, Attachment A (Scope of Work) and any attachments, constitute the sole entire Agreement and understanding between the District and Contractor. It replaces and supersedes all prior agreements or negotiations, whether written or verbal. It may not be modified except in a writing signed by the District and Contractor.

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**IN WITNESS HEREOF**, the District and Contractor have executed this Agreement as of the dates set forth below.

<b>FOR DISTRICT:</b>	<b>FOR CONTRACTOR:</b>
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

<b>*APPROVED Re: Form &amp; Legality</b>
By:
Date:

\*MUST BE SIGNED BY THE DISTRICT IF  
MODIFICATIONS MADE TO THIS AGREEMENT.

*District Use Only:*

**Required Information** (Completed by initiating College/District Department)

District Agreement Originator:	
Manager/Dean/Budget Officer Approval:	
GL Account:	
Requisition Number:	

**ATTACHMENT A – SCOPE OF WORK**

Contractor [Legal Name]:	
Address, City, State, Zip:	
Primary Contact Name:	
Primary Contact Phone:	
Primary Contact Email:	

District/Department Primary Contact Name:	
Primary Contact Phone:	
Primary Contact Email:	

**CONTRACT PERIOD:**

Start Date:	End Date:
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**RESPONSIBILITIES OF CONTRACTOR, CONTRACT OBJECTIVES AND DELIVERABLES:**

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**RESPONSIBILITIES OF THE DISTRICT:**

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**Rate of Payment:**

\$ \_\_\_\_\_ per: [Hour  Day  Month  Annually  Project  Other, specify \_\_\_\_\_